

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)  
SECOND APPEAL No. 65 OF 2023**

**BETWEEN:-**

**1. VISHNU S/O AHIRA SINGH, AGED ABOUT 55 YEARS;**

**2. LALLA S/O AHIRA SINGH, AGED ABOUT 48 YEARS;**

**3. GANESH SINGH S/O AHIRA SINGH (NOW DEAD) THROUGH LEGAL REPRESENTATIVES:-**

**3(A). SUMITRA BAI WD/O GANESH SINGH, AGED ABOUT 40 YEARS;**

**3(B). SUKHDEV SINGH D/O GANESH SINGH, AGED ABOUT 18 YEARS;**

**3(C). KU. ASHA BAI D/O GANESH SINGH, AGED ABOUT 9 YEARS;**

**3(D) SANDEEP S/ GANESH SINGH, AGED ABOUT 4 YEARS;**

**APPELLANTS 3(C) AND 3(D) BEING MINORS THROUGH THEIR GUARDIAN MOTHER SUMITRA BAI W/O GANESH SINGH.**

**4. SAMUDIYA BAI D/O PAWAN SINGH (WRONGLY MENTIONED AS AHIRA SINGH IN THE IMPUGNED ORDER), AGED ABOUT 29 YEARS;**

**5. JEEVAN SINGH S/O PAWAN SINGH; AGED ABOUT 24 YEARS;**

**6. MOHVATI D/O PAWAN SINGH, AGED ABOUT 31 YEARS;**

**7. MANMAT BAI WD/O LATE PAWAN SINGH; AGED ABOUT 52 YEARS;**

**ALL OCCUPATION AGRICULTURIST, R/O VILLAGE  
SALHARO, TEHSIL PUSHPRAJGARH, DISTRICT  
ANUPPUR (M.P.)**

**.....APPELLANTS**

**(BY SHRI UMAKANT SHARMA – SENIOR ADVOCATE WITH MS.  
PRABHA KHARE - ADVOCATE )**

**AND**

**1. CHOTELAL S/O MADNU SINGH, AGED  
ABOUT 60 YEARS, R/O VILLAGE SALHARO, TEHSIL  
PUSHPRAJGARH, DISTRICT ANUPPUR (M.P.)**

**2. TIJIYA BAI WD/O LATE SAMMAL SINGH  
(DEAD) THROUGH LEGAL REPRESENTATIVES:**

**2(A) AMRATH D/O TIJIYA BAI W/O RAMPRASAD,  
R/O BODATOLA, TEHSIL PUSHPRAJGARH,  
DISTRICT ANUPPUR (M.P.)**

**3. DADAN SINGH S/O SAMMAL SINGH, AGED  
ABOUT**

**32 YEARS R/O VILLAGE SALHARO, TEHSIL  
PUSHPRAJGARH, DISTRICT ANUPPUR (M.P.)**

**4. DHAN SINGH S/O SAMMAL SINGH, AGED  
ABOUT 30 YEARS, R/O VILLAGE SALHARO, TEHSIL  
PUSHPRAJGARH, DISTRICT ANUPPUR (M.P.)**

**5. KAMAL SINGH S/O KAGDU SINGH, AGED  
ABOUT 46 YEARS, R/O VILLAGE SALHARO, TEHSIL  
PUSHPRAJGARH, DISTRICT ANUPPUR (M.P.)**

**6. DEV SINGH S/O KAGDU SINGH, AGED ABOUT  
38 YEARS, R/O VILLAGE SALHARO, TEHSIL  
PUSHPRAJGARH, DISTRICT ANUPPUR (M.P.)**

**7. AMAR SINGH S/O KAGDU SINGH, AGED  
ABOUT 36 YEARS, R/O VILLAGE SALHARO, TEHSIL  
PUSHPRAJGARH, DISTRICT ANUPPUR (M.P.)**

**8. GENDLAL SINGH S/O CHHOTA SINGH, AGED ABOUT 36 YEARS, R/O VILLAGE SALHARO, TEHSIL PUSHPRAJGARH, DISTRICT ANUPPUR (M.P.)**

**9. THE STATE OF MADHYA PRADESH THROUGH COLLECTOR, DISTRICT ANUPPUR (M.P.)**

**.....RESPONDENTS**

**( NONE FOR RESPONDENT NOS. 1 TO 8 )**

**( SHRI D.S. PARIHAR – PANEL LAWYER FOR RESPONDENT NO.9/ STATE )**

**(Heard on : 27/02/2024)**

**(Passed on: 18/03/2024)**

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This Second Appeal having been heard on admission and reserved for orders, coming on for order today, Justice Amar Nath (Kesharwani) passed the following:

### **ORDER**

This Second Appeal has been preferred by the appellants/plaintiffs under Section 100 of the Code of Civil Procedure, 1908 being aggrieved by the judgement and decree dated 02/12/2022 passed in Regular Civil Appeal No.2/2018 by Court of District Judge, Rajendragram, District Anuppur (M.P.), whereby learned District Judge dismissed the appeal and affirmed the judgement and decree dated 20/12/2017 passed by Additional Civil Judge Class-I, Rajendragram, District Anuppur (M.P.) in Civil Suit No.83-A/2016, whereby the suit filed by appellants/plaintiffs for declaration of title, ownership and for permanent injunction has been dismissed.

**2.** Brief facts of the case are that the appellants/plaintiffs have filed a civil suit for declaration of title, ownership and for permanent injunction for the suit properties bearing Khasra Nos. 4,5, 7, 9, 12, 42,

43, 90, 102, 103, 394, 407, 411, 420, 422, 455, 443, 545, 563, 430/586, 39/627, 40/628, 43/631, 44/632, 45/633, 46/634, 48/636, 51/639, 54/142, 59/647, 60/648 and 73/661 total 39.69 acres (herein after called the suit property) situated at Village Salharo, Tehsil Pushprajgarh, District Anuppur (M.P.) on the ground that the suit property belonged to ancestor of the plaintiffs 'Dharamdasiya Gond', which is self acquired property and defendants are neither the heirs or related to 'Dharamdasiya Gond', therefore, they do not have any title over the suit property, however, in collusion with the revenue authorities, they have got their names entered in the revenue records. It is also alleged that the defendants claim their false possession over the suit property and moved an application under Sections 145, 149 of the Criminal Procedure Code and are trying to dispossess and disturb the peaceful possession of the plaintiffs and to get the suit property auctioned. Defendants have filed the written statement and denied all the claims and averments mentioned in the plaint and contended that the Sajra Khandan (Family Tree) produced by the plaintiffs is incorrect and incomplete and the plaintiffs deliberately not mentioned the name of brother and father of 'Dharamdasiya Gond'. They further pleaded that they are the relatives of the appellants/plaintiffs and their family members having same descendants and therefore, they are entitled for the share in the suit property. They have also pleaded that partition in the family has already been done and on that basis they are in possession of the suit property and their names have already been entered in the revenue records and they prayed for dismissal of suit.

3. Learned trial Court after framing of the issues and recording of evidence dismissed the civil suit as found not proved, against which appellants/plaintiffs preferred an appeal which was also dismissed by the impugned judgement. Being aggrieved by the impugned judgement, present second appeal has been filed.

4. Appellants have filed this appeal challenging the concurrent findings of the trial court as well as the first appellant Court on the following substantial question of law :

“1. Whether, in the facts and circumstances of the case, the Courts below were justified in not considering the admission of defendants that the partition has not been proved ?

2. Whether in the facts and circumstances of the case, the First Appellate Court was justified in rejecting the applications filed by the appellants/plaintiffs under Order 1 Rule 10 and under Order 41 Rule 27 of the Code of Civil Procedure Code?”

5. Learned Senior counsel for the appellants submitted that learned courts below have wrongly dismissed the suit as well as appeal and findings recorded by the courts below are perverse and against the evidence on record. On the strength of above, it is submitted that substantial questions of law, as mentioned in the appeal memo, arise for determination of this Court and appeal be admitted for final hearing.

6. I have heard the contentions of learned counsel for the appellant and perused the record and the impugned judgement.

7. It reveals from the impugned judgement that learned First Appellate Court has elaborately discussed the evidence and documents i.e. revenue records Exhibit P/4 and P/6 in para Nos. 22 to 25 and recorded its findings in para No.26 of the impugned

judgement and affirmed the judgement passed by learned trial Court. Similarly, in para Nos. 16 and 20 and 21 of the impugned judgement, learned First appellate Court specified the just and proper reasons for rejecting the application filed under Order 1 Rule 10 of CPC as well as application filed under Order 41 Rule 27 of CPC, which does not require any interference by this Court.

8. Hence, in the considered opinion of this Court, learned trial Court as well as First Appellate Court have considered the pleadings of the parties and evidence placed on record and after marshalling the entire evidence, the issues involved in the case were properly decided. There are concurrent findings of fact by both the Courts. Learned Senior counsel for the appellants/plaintiffs has failed to demonstrate that those findings are either contrary to record or perverse. Learned Senior counsel for the appellants/plaintiffs was also not able to point out any substantial question of law which needs adjudication in this Second Appeal.

9. In the case of ***Kondiba Dagadu Kadam vs Savitkibai Sopan Gujar And Ors., (1999) 3 SCC 722*** Hon'ble Apex Court held that the High Court must satisfy itself that substantial question of law is involved and must then formulate the question of law on which the appeal could then be heard. It is also held that the concurrent findings of fact however erroneous cannot be disturbed under Section 100 of the CPC.

10. In the case of ***Suresh Lataruji Ramteke Vs. Sau. Sumanbai Pandurang Petkar & Others, 2023 LiveLaw (SC) 821*** Hon'ble Apex Court has held that a Court sitting in second appellate jurisdiction in

ordinary course, the High Court in such jurisdiction does not interfere with finding of fact.

**11.** As discussed above, in view of concurrent findings of the fact and in absence of any substantial question of law, I find no reason to entertain this appeal. Hence, appeal sans merit and is hereby dismissed.

**12.** Cost of the appeal will be borne by the appellants themselves.

**13.** Let the record of the trial Court as well as First Appellate Court be sent back to the concerned Courts alongwith the copy of this order.

**(AMAR NATH (KESHARWANI))  
JUDGE**

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